

Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2016 Regular Session

Part I: Measure Information

Bill Request #: 435

Bill #: SB 37 SCS

Bill Subject/Title: AN ACT relating to crimes and punishments

Sponsor: Senator Joe Bowen

Unit of Government: City County Urban-County
Unified Local
 Charter County Consolidated Local Government

Office(s) Impacted: Local Law Enforcement, Local Courts, Jails, Juvenile Dentention Centers.

Requirement: Mandatory Optional

Effect on
Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

SECTION 1:

As introduced, SB 37 provides that a person is guilty of transmission of a “nude image” by a person under the age of 18 when, being under the age of 18, he or she uses a computer or electronic communication device to transmit a nude image of himself, herself, or another person under the age of 18 to another person. A person committing these acts is guilty of a violation for the first offense and a **Class B misdemeanor** for each subsequent offense. SB 37 provides that the juvenile session of the District Court shall have jurisdiction over this offense.

**SB 37 defines “nude image” as an obscene image showing all or any part of the human genitals or pubic area or any part of the female breast from the top of the nipple downward.*

SB 37 provides that the Sex Offender Registry statutes (KRS 17.500 to KRS 17.580) shall not apply to a person who was under the age of 18 at the time the offense was committed.

SB 37 provides that no person under the age of 18 shall be tried for, found guilty of, or adjudicated delinquent of any other offense in KRS Chapters 510, 530, 531, or another chapter of the KRS for conduct that is prohibited by this section.

SB 37 provides that a person who is found guilty of this offense who was under the age of 18 at the time the crime was committed shall once the person reaches the age of 18 shall have his record expunged.

SECTION 2:

As introduced, SB 37 provides that a person (no reference to age) is guilty of possession of a nude image transmitted by a person under the age of 18 when he or she knowingly possesses a nude image transmitted to him or her by a person under the age of 18 (no reference to age of the person depicted). A person committing this act is guilty of a violation for the first offense and a **Class B misdemeanor** for each subsequent offense. SB 37 provides that a person under the age of 18 at the time the offense was committed shall be prosecuted in the juvenile session of the District Court. A person who is 18 or older at the time of commission shall be prosecuted in the District Court. SB 37, as introduced, provides that the Sex Offender Registry statutes (KRS 17.500 to KRS 17.580) shall not apply to a person (no reference to age) adjudicated delinquent or found guilty of this offense.

SB 37 provides that no person (no reference to age) shall be tried for, found guilty of, or adjudicated delinquent of any other offense in KRS Chapters 510 or 530 or another chapter of the KRS for conduct that is prohibited by this section.

SB 37 provides that it shall not be a violation if the person took reasonable steps, successful or not, to destroy or eliminate the nude image. An action by a person pursuant this effort shall not be charged with hindering prosecution or apprehension (KRS 520.120 and 520.130) or tampering with physical evidence (KRS 524.100).

SB 37 provides that a person who is found guilty of this offense who was under the age of 18 at the time the crime was committed shall, once the person reaches the age of 18 have his record expunged.

SB 37 SCS retains the major provisions of the measure as introduced and makes the following changes in the bill:

Under Section 2, SCS amends (4) to provide that the Sex Offender Statutes shall not apply to a person who was under the age of 18 at the time the offense was committed as opposed to a “person” adjudicated delinquent or found guilty of this offense. Likewise, Section 5 limits the prohibition of prosecutions under KRS Chapters 510 and 530 to those under the age of 18.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of SB 37 SCS on local governments is expected to be minimal.

Regarding defendants under the age of 18:

Jefferson County is the only county that operates a juvenile detention center. The other 119 centers are operated by the Department of Juvenile Justice (DJJ) and therefore outside the scope of this impact statement. The fiscal impact on Jefferson County is indeterminable. It is dependent on the number of detainees residing at the Center and in what program they might be participating.

The DJJ has a contract with Louisville Metro to reimburse them the following amounts per detainee:

- \$94.00 day for subsidy payments,
- \$100.00 a day for Commissioner Warrants,
- \$6.00 a day for Department Juvenile Justice committed juveniles,
- \$75.00 a day for Alternative Placement Services,
- \$50.00 a day for Home Incarceration Program Services, and
- \$50.00 a day for Home Supervision Program Services.

Regarding defendants age 18 and over:

A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. Misdemeanants are housed in one of Kentucky's 78 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.92 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.92 per day.

Data Source(s): LRC Staff, Attorney General

Preparer: Wendell F. Butler **Reviewer:** JWN **Date:** 3/1/16